

**Harpswell Planning Board Meeting
Minutes of July 17, 2002**

Approved 8-21-02

Attendance: James Henderson-Chairman, John Papacosma-Vice-Chairman, Howard Nannen, Don Rogers, Dorothy D. Carrier, Sam Alexander - Associate, Noel Musson - Planner, Karen O'Connell - Recording Secretary.

The meeting was held at the Harpswell Television Studio, had been advertised in the Times Record and was recorded. Chairman Henderson called the meeting to order at 6:30 P.M., reviewed the agenda and introduced above members and staff. Henderson led the pledge of allegiance.

Board Procedures Discussed

Chairman Henderson reviewed Board agenda and procedure at the meeting including that applicants provide brief summary, followed by Board hearing any public comment, then review of proposals including a decision regarding necessity for an on-site visit.

Carrier indicated she had received notice of the Epstein matter as she lives in the neighborhood. The Board reviewed the Board By-Laws and guidance regarding potential conflicts of interest. Nannen and Alexander raised points of guidance from the By-Laws which indicated that being in the neighborhood raises issue of impact on property values. Henderson concluded there is also the issue of appearances. Carrier indicated she had no interest and that she considered it appropriate to excuse herself from the Epstein application review and to participate as member of the public.

Sam Alexander was then appointed as a voting member for the purposes of the Epstein matter discussion.

Henderson briefly announced two items which would be heard later on the agenda involving Hurd and Moody applications.

Don Rogers indicated he feels the need for site visits and this was also added to the evening agenda.

Approval of Minutes - The Board approved the minutes of June 19, 2002 with corrections. (Motion by Nannen seconded by Carrier - Carried 5-0)

02-7-1 David M. Epstein and Hope Taylor Epstein represented by John Carter (General Contractor) and/or James Herrick (Architect) Reconstruction of Non-Conforming Structure and Exemption for Non Conforming Foundation, Commercial Fishing I, Tax Map 46-104, 63 Kopaddy Trail, off Pinkham Point Rd., Great Island.

Applicant Presentation - John Carter turned in to the Board two new items as part of the required application materials including photos and a geological map which had been received just today. Carter reported that currently the Epsteins have an 820 square foot home. With a 30% allowance they would be able to add 246 square feet. The plan is to expand to a total of 1049 square feet (less than the 30%) and maintain a one story building. They also plan to raise a portion of the foundation 16 inches (two cinder blocks) to accommodate a grade problem near the driveway and clean up an irregular or "messy" roof line. In terms of lot coverage, the applicant will reduce some of the paved surface on the lot. Carter reported a letter dated the 16th of October 2001, estimates lot coverage at 21% and the reduction of asphalt on lot should reduce that coverage. Carter reported a more recent letter from Noel Musson changes the lot coverage numbers slightly but Carter indicated the final coverage should be reduced and drainage problems will be handled as part of the site work.

Carter noted that the septic design by William Maier is in the State's hands and the FEMA Map will need to be adjusted to indicate that the elevation is above the Flood Zone. Carter reported there was a recent survey for the area flood plain and a letter of Map Amendment (LOMA) is in process to make this correction. Because of steep grade, Carter indicated the home is best left where it is. Carter indicated a structure attached to the barn would be removed to accommodate the septic and the addition would come out the full length of the back of the house extending out 8 feet.

Board Discussion Papacosma raised the issue of the home being designated as a seasonal home per the file copy of a July 9, 2002 memo from Codes with a statement (#4) that the septic system does not meet the seasonal conversion requirement. Nannen noted the variance request within subsurface wastewater application. Alexander noted part of the septic system variance request may include distance from well and also the distance to the high water mark. Nannen indicated another condition of the variance request was that there would be no change in use of the structure, but was not sure how that was defined. Carter asked about

the definition of year-round use. Papacosma indicated the issue involved is the intensity of use and the capacity of the system to deal with that.

Public Comment - Mr. Pulsifer indicated it was a year-round house prior to the Epstein purchase based on his attendance at a winter fire call to the home. Ms. Carrier speaking as a member of public and a long term neighbor indicated over the past years, the home was used as a year-round home though most recent residents prior to Epsteins did go to Florida for several months of the year. Henderson indicated that they could proceed based on this testimony about the year round use of the home. However, Henderson noted they would proceed with the condition the Codes Office has no conflicting record indicating seasonal use or the septic as approved only for seasonal use regardless of how the home is actually being used. (Richard Niemann Associate Board member arrived and was introduced at this time.) Neighbor Mary Hoffert indicated she believes the plan and improvement of the septic improves the neighborhood. Terry Sinsky indicated she sees the plan as an improvement overall. -Dee Carrier sees the proposal as good for the community and has no objections to the proposal. A letter was read from another neighbor (Nunnally) which noted no objections and this letter was submitted for the record (copy to be returned to Mr. Carter)

Board Discussion - Henderson asked Noel Musson regarding additional points of focus. Musson reviewed his planners note about the possibility of 50% reconstruction triggering review of whether applicant meets the setbacks to the greatest possible extent per 10.3.2.2. There is also a need for the Board to approve the exemption of the foundation from the 30% limitations. Musson noted that based on a site visit he has seen how the driveway is very steep and the grade is a challenge.

Henderson noted they would defer to the Codes Office to determine if the septic meets the approved use. He indicated the Board must also determine if the setback meets the 75 foot limit to the greatest possible extent. Henderson noted the setback for this building is about 21 feet. Henderson reviewed the criteria related to setbacks that the Board must consider in determining greatest practical extent including such items as lot size, slope, erosion potential, other structures on the property, location of septic and type of vegetation to be removed if building is to be relocated. In response to a question of feasibility of moving the building back, Carter noted that movement back from the water would increase slope around the building and require dramatic raising of the building impacting neighbor's views. Papacosma indicated the contour lines on the geological map and photos leave appearance of a very flat area. Board members clarified through discussion the impact of moving the house uphill determining that as you go up the grade and as the grade steepens there is a need to increase building height. Applicant representative Coley Pulsifer indicated a movement of the building back would disturb more land and increase potential for erosion. Papacosma commented that decisions are not made to protect views but to protect resources. Pulsifer also indicated that septic would be moved to a new improved location further from the water. With Board having no more comments, Henderson suggested the following motion.

Motion - The Board finds that the application of the Epsteins on a plan dated June 25, 2002 meets the setback requirements to the greatest practical extent as outlined by section 10.3.2.1 and also meets requirements of 10.3.2.2 of the Shoreland Ordinances. (Motion by Henderson and seconded by Rogers)

Rogers noted that the septic system would need to be approved.

Board Discussion Continued - Niemann noted the well is only 42 feet from the drain field and the Board discussed that such technical matters would be handled by the state. It was noted that a cistern is located on an abutters land and that played into the location of the drain field away from that area.

Nannen indicated he is more comfortable voting for this type of minimal expansion as there are a number of issues mitigating for approval including the steepness of the slope and the size of the lot and the number of (negative) trade offs that would have to take place if the building were to be moved. Papacosma indicated he was not as comfortable. He was concerned about understanding grade without contour lines and thus whether there was potential to move the building. He also raised issues of drainage and how that would be controlled. Applicant representative indicated there were two drainage catch basins and another barrier in front of the house. In addition, the sea wall acts as a catch basin. Henderson noted that as a matter of procedure the item could be tabled for a Board site visit if so desired. **The board then voted on the above motion - Carried 5-0)**

Conditions Discussion- Henderson and the Board reviewed the conditions that would apply including 1. Need to determine whether there is anything in the record about the home being a seasonal dwelling that would prevent the Code Office from going forward and that the septic system meets the requirements of a year round residence. (July 9 letter from Carl Adams #4 was noted) and 2. The need to determine whether the structure is in the 100 year Flood Plain.

Noel Musson indicated that a LOMA application is an application to reevaluate a site to determine if it is or is not in a flood plain. The applicant will be pursuing this.

Motion proposed by Henderson - The Board approves the application considering the above noted finding made in respect to setback and on the following conditions: (1) that the applicant provides sufficient evidence that the property is not in the 100 year Flood Plain and (2) that the sub surface waste disposal system meets the requirements of (is approved by) the Code Office. (Motion by Henderson and seconded by Nannen - Carried 5-0)

Henderson reviewed the Notice of Decision in order to expedite the notice. Musson recommended a detailed review of the Notices of Decision and suggested more general Board discussion about the process used for Notices of Decision could take place in the future.

02-7-2 Gary E. Hawkes, Reconstruction of Non Conforming Structure, Commercial Fishing, Tax Map 64-44, Cundys Harbor Rd.

Carrier was reinstated as a full voting member and Sam Alexander excused himself from this matter as he had been involved when the matter was previously before the Board of Appeals.

Applicant Presentation - Mr. Hawkes explained that his proposal is to tear down an old home and rebuild the home raising the foundation by 1 foot or so to be able to accommodate a furnace. Hawkes indicated that he would be expanding the square footage about 260 feet as two dormers are to be expanded. Henderson noted that if the building was to be moved back, it might compromise another setback. Hawkes indicated he had to obtain a verification of Flood Plain status indicating he had a LOMA. He indicated his septic site plan had been designed by Al Frick. He indicated the plan for reconstruction was less than a 30% increase. Hawkes also indicated he had been approved by the Board of Appeals years ago (1986) but then was told recently by the Town Attorney this was not current correct procedure and was directed back to the Planning Board.

Public Comment - Sam Alexander testifying as a member of the public indicated that in the past, the ordinance and procedures allowed appearing before the Appeals Board. A letter on file from a neighbor in the area, Simone Hoffman, was referenced noting she has no objections.

Board Discussion Continued - Henderson asked why the building was being torn down and Hawkes explained that with the current stone foundation, the water is running in and out. Hawkes explained he wishes to reproduce what is there on the same footprint and avoid cutting down apple trees in the back.

Board Vote - Henderson asked the Board to consider the same motion as in the previous matter.

Motion - The Board finds that the application of the Hawkes on a plan dated May 29, 2002 meets the setback requirements to the greatest practical extent as outlined by section 10.3.2.1 and also meets requirements of 10.3.2.2 of the Shoreland Ordinances. The Board further finds that the Application meets the requirements of section 10.3.1.2 regarding reconstruction of a foundation (Motion by Henderson and seconded by Carrier and Nannen - Carried 5-0)

Board Conditions Discussion - Nannen asked about the Flood Plain letter and Hawkes noted the survey was done and the Town has a copy of the survey. The Board concluded that this would be a condition required for approval. Musson referenced his memo indicating need for the Board to consider the exemption of the new foundation in approval of the project.

Board Vote - Conditions - Motion - Based on the findings the Board has made on the previous motion, the Board approves the application subject to the conditions (1) that the applicant shows that the project is not within the 100 year Flood Plain and (2) that the septic system meets the approval of the Harpswell Codes Office (Motion by Henderson and seconded by Carrier - Carried 5-0)

Henderson then reviewed the Notice of Decision and Musson recommended they be read through and agreed to by the Board. Each item was reviewed and there was general agreement conditions were met and the above two conditions were again noted. In addition protection of archeological and historical resources based on Comprehensive Plan would be reviewed by Planner Musson. Henderson also read through 13.4 Conditions of Approval and Section 15 for any applicable items.

Motion - The application meets requirements of section 13.4 of Basic Land Use Ordinances with the following conditions:

- 1. That subsection 3 meet the approval of local plumbing inspector/codes office,**
- 2. that subsection 6 will be confirmed by the planner to protect archeological and historic resources and,**
- 3. that subsection 8 is subject to confirmation that there will be evidence the project is outside the 100**

year flood plain.

(Motion by Henderson and seconded by Rogers - Carried 5-0)

Board Discussion - Reopen or Reconsideration of Final Approval of Epstein Application for

procedural Purposes- Henderson called for a discussion of the Epstein matter on the Basic Land Use 13.4 and Foundation Exemption under 10.3.1.2. Sam Alexander indicated he had concerns about discussion with an applicant not present. Board members indicated they might be willing to discuss matter without the applicant present if it was only procedural and as long as there was no impact on the decision. Several motions as how to proceed were made but not seconded. **Motion - The Board concludes the Epstein application meets the requirements of section 10.3.1.2 regarding the construction of a foundation (Motion by Nannen and seconded by Papacosma) This motion was not acted upon.** The Board discussed the Epstein application briefly and concluded not to act at this time.

Previous Application of the Hurds - Henderson noted there was a seating numbers issue with a difference between the HHE Septic Design form showing a limit of 30 seats and the applicant original proposal of 60 seats (both inside and out). The Hurds have decided to revise their application and would reduce the outside seating. Musson indicated the Hurds would be amending their application to reduce seating to 25 inside seats and 7 outside seats. Musson agreed to revise or make an appropriate attachment to the Notice of Decision according to procedures...

David Moody Wharf and Fish House - Musson indicated the applicant had approached the Codes Office indicating the Fish House was noted as 14 feet in an approved plan, but should have been 20 feet. The Town Attorney indicated this matter should come before the Planning Board. After discussion, the Board concurred since the language to approve this as a minor change is not in the Shoreland Ordinance. In addition the Board indicated the 40% increase in volume is not a minor change and that the matter should be reopened and abutters should be notified; otherwise applicant would need to stay with the approved application height of 14 feet.

Requirements For Inclusion on Agenda - Noel Musson indicated he is working on a list to determine what would be a complete application before the Board and would like more time to observe the process to work on this listing. Papacosma indicated in Harpswell because of the typically sloping topography, contour lines representing grade are important. Noel Musson asked that Board members provide him with any other suggestions they may have for this list...

Scheduled Site Visit Day - The Board decided to schedule a regular site visit time of 4:00 P.M. on the Monday prior to the meeting and the Board members would assemble at Town Hall. The Board discussed that abutters need to be notified so that site visits should be predetermined and scheduled to allow for that process and the planner may be able to assist the Board in scheduling decisions. It was noted that the time of day will need to be changed for the winter months.

New Town Planner Assistant - Noel Musson introduced Amy Ferrell the new Town Planner Assistant.

Adjournment - The meeting was adjourned at 9:30 P.M.

Respectfully Submitted,

Karen O'Connell, Recording Secretary